

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-825

March 22, 2000

Petition of the Office of the Public Advocate
To Initiate Investigation of Appropriate
Disposition of Additional Federal
Universal Service Funds
Docket 99-825

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we approve the Stipulation filed on March 1, 2000, in the above-captioned docket. The Stipulation contains an agreement that was negotiated among Bell Atlantic-Maine (Bell Atlantic or BA), the Office of the Public Advocate (OPA) and the State Planning Office (SPO), with the assistance of the Commission Staff. The Stipulation, a copy of which is attached to this Order, recommends the distribution of additional high-cost Universal Service Fund (USF) support designated by the Federal Communications Commission (FCC) for the non-rural local exchange carrier (LEC) in Maine.¹ Under the Stipulation, all customers in the LEC service territory would see a credit of at least \$.23 per month for the calendar year 2000 while customers in the Metro and Second Tier wire centers would see a credit of \$1.40 and \$1.00, respectively, for residential customers and \$5.18 and \$3.00, respectively, for business customers.

II. FCC ORDER

On November 2, 1999, the FCC adopted a new mechanism to provide high-cost support to non-rural carriers beginning on January 1, 2000. In the Matter of Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, (FCC 99-306, released November 2, 1999) (USF Order). The new mechanism made available an additional \$10.2 million in explicit interstate universal service support for the year 2000 for customers in Bell Atlantic's Maine territory.

¹At present, the only non-rural LEC in Maine is Bell Atlantic, but the additional high-cost funds are portable to any Eligible Telecommunications Carrier (ETC) that serves customers in Bell Atlantic's exchanges.

The USF Order requires states to certify by April 1, 2000,² that the non-rural carrier(s) in their jurisdictions will use the federal support in compliance with section 254(e) of the Telecommunications Act of 1996. Section 254(e) states that carriers must use universal service support “only for the provision, maintenance and upgrading of facilities and services for which support is intended.” 47 U.S.C. § 254(e). The FCC stated in the USF Order that, “the primary role of each state is to ensure reasonable comparability within its borders (i.e., to apply state and federal support to make local rates reasonably comparable within the state).” USF Order at ¶ 38. The FCC also explicitly stated that it would not direct the manner in which states incorporated the new high-cost support into their ratemaking process but would allow each state to determine how support should be used to advance the goals of section 254(e).

III. PROCEDURAL BACKGROUND

On November 19, 1999, the OPA filed a Petition to Initiate Investigation of Appropriate Disposition of Additional Federal Universal Service Funds. On December 13, 1999, the Commission issued a procedural order inviting all interested persons to a meeting at the Commission on December 16, 1999, to discuss the process that would be used to facilitate Commission certification regarding the use of the federal USF funds. The procedural order was faxed to Bell Atlantic, the Telephone Association of Maine, the Office of the Public Advocate, and all facilities-based competitive local exchange carriers (CLECs) in Maine and was mailed to the service list in Docket No. 97-319, Proposed Amendment of Chapter 280 to Achieve Parity With Interstate Access Rates by May 30, 1999.

Representatives from Bell Atlantic, the OPA, the Telephone Association of Maine (TAM), Mid-Maine TelPlus, Fairpoint Communications, and the Governor’s Office attended the December 16 meeting. The parties were unable to reach substantive agreement at that time. However, on March 1, 2000, following a meeting held on January 11, 2000, and subsequent discussions, Bell Atlantic submitted the Stipulation on behalf of itself, the OPA and the SPO. TAM and the OPA each submitted separate statements/comments regarding the Stipulation on March 2, 2000.

IV. DESCRIPTION OF THE STIPULATION

The Stipulation provides that the additional federal USF funds, currently estimated to total \$10.25 million for 2000, should be credited to customers’ bills to reduce the implicit subsidies that currently exist in BA’s basic local rate structure. This is accomplished by targeting the high-cost funds to wire centers that have, relative to their rate structure, the lowest cost per access line, calculated by using average lines

²The Order originally required certification by December 31, 1999. On December 17, 1999, the FCC extended the deadline to April 1, 2000.

per square mile as a proxy.³ The Stipulation also gives a larger credit to business customers, based on the premise that through their higher rates they make a larger contribution to implicit universal service support than do residential customers in similarly situated wire centers.

The Stipulation indicates that the exact timing of the receipt of the high-cost funds is uncertain at this time, but that funds are expected to be made available starting in July, 2000, at which time the bill credits described in the Stipulation will begin.⁴ Current indications are that the retroactively applicable amounts will be paid to the carrier monthly, but it is possible that the entire first-quarter amount will come as a single payment during the third quarter. The essence of the Stipulation is that Bell Atlantic customers should receive credits applicable to the first half of 2000 on their bills during the second half of 2000, along with the concurrent second-half credits. For example, if Bell Atlantic receives its support payments for January and July of 2000 during the month of July (or in early August), the Company's customers will see two months worth of credits on their July bills. If Bell were to receive the entire amount related to the first quarter in a single payment, customers would see four months of the credit amount on the bill for the month in which the payment is received from USAC, or at latest, customers would receive the credit in the following month, which would allow the Company time to correctly adjust its billing system.

The pattern of combined current and retroactive credit amounts on customers' bills will occur only until payment of the high-cost support amounts from USAC becomes entirely current, which is expected at the beginning of 2001. The parties to the Stipulation have not agreed on the distribution of high-cost funds beyond 2000; if the FCC orders continuation of support beyond this year, a new agreement will have to be negotiated, or the Commission will decide the use of the funds after receiving input from interested parties. The parties to the Stipulation are free to propose and support a different means of applying any USF support that becomes available in future years.

The Stipulation also contains a provision that requires reconciliation of the amount of support received by BA with the amount of the credits provided on customers' bills, with a final true-up of those amounts at the end of 2000, or early in

³This method of distributing the USF support is expressly authorized by the FCC's Order. See USF Order at ¶ 96. ("[A] state could adjust intrastate rates, or otherwise direct carriers to use the federal support to replace implicit intrastate universal support to high-cost rural areas, which was formerly generated by above-cost rates in low-cost urban areas . . .")

⁴The FCC has indicated that amounts applicable to support for the first quarter of 2000 will be paid to the non-rural carrier during the third quarter of 2000, and similarly, amounts for second quarter support will be paid during the fourth quarter of the year. The amounts related to support for the first half of the year will be credited to customers as soon as is practical after those funds are made available by the Universal Service Administrative Company (USAC).

2001 to allow time for all amounts to be checked and verified. The Stipulation recommends that, after reviewing Bell Atlantic's calculations and proposed true-up mechanism, the Commission's Acting Director of Finance be given the authority to approve the true-up. Subject to our retention of the ultimate authority to review and approve the true-up mechanism should a dispute arise or should we wish to do so on our own, we will grant the delegated authority recommended by the parties.

The credit amounts shown in the Stipulation for customers in the "Metro" and "Second Tier" wire centers⁵ are estimates, which will be adjusted proportionally if the FCC substantially changes the total amount of support to be provided. The Stipulation defines the wire centers for the residential and business customer classes that are contained in each of the tiers for application of the credit amounts. The Stipulation also provides that the monthly credit amount for the "All Other Wire Centers" category will remain at \$.23 per line regardless of the total amount of funding provided.

V. DECISION

A. Standard of Review

In reviewing a stipulation submitted by the parties to a proceeding, we must consider:

1. whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. whether the process that led to the stipulation was fair to all parties; and
3. whether the stipulated result is reasonable and is not contrary to legislative mandate.

See Consumers Maine Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (Me. P.U.C. July 3, 1997). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. Id.

B. Discussion

Three parties have signed the Stipulation and two others (Fairpoint and TAM) have not signed but indicate no opposition to the substance of the agreement. In its comments on the Stipulation, however, TAM noted that while it generally agreed with the terms of the Stipulation, it was concerned that the \$0.23 credit would be construed

⁵The credit amounts are \$1.40 and \$1.00, respectively, for residential customers, and \$5.18 and \$3.00, respectively, for business customers.

as an explicit offset to the federal LNP charge. We find that, in light of the broad participation in the discussions, including in particular the participation and concurrence of the OPA, the first test is met.

We find no basis in TAM's comment to reject the Stipulation. The \$0.23 credit is not, as we view the Stipulation, linked in any way to the LNP charge. Instead, the \$0.23 credit is a negotiated amount; the parties agreed that all customers should receive some rate reduction. We approve the Stipulation based on our understanding that any future changes in the amount of the LNP charge will have no effect on the agreement implemented through this Stipulation.

With regard to the process in reaching the Stipulation, as recounted above, we gave wide notice of this proceeding. While ultimately only a small number of parties chose to participate, we do not find that this level of participation in any way diminishes the fairness of the process.

Finally, we find that, taken as a whole, the Stipulation represents a reasonable accommodation of the numerous, and sometimes competing, interests involved. Moreover, the Stipulation meets the guidelines set forth by the FCC for the acceptable use of the funds. The Stipulation proposes that the credits be used to reduce some of the implicit subsidies that currently exist within the rate structure of Bell Atlantic-Maine. While we do not have completed cost studies available that would allow calculation of the subsidy amounts with greater precision, previous cases involving cost studies (see e.g., Re: Investigation Into New England Telephone Company's Cost of Service and Rate Design, Docket No. 92-130) indicate that, in general, customers in Bell's higher cost rural wire centers actually pay lower rates than do customers in the more urban, lower cost wire centers. The Stipulation thus moves rates in the direction of their underlying costs, reduces the implicit subsidy that flows from low-cost to high-cost wire centers, and simultaneously keeps basic rates throughout the State comparable and affordable.

We intend to file a letter with the FCC by April 1, 2000, certifying that the high-cost funds made available by USF Order will be used in compliance with the guidelines established by the FCC. Doing so will ensure that whatever amount of money the FCC determines should be made available to the non-rural carrier in Maine will become available at the earliest possible time.

Therefore, we

ORDER

1. That the Stipulation filed on March 1, 2000, in this docket is approved;
2. That, subject to review by the Commission, the Acting Director of Finance is authorized to approve the true-up mechanism that will occur at the conclusion of the 2000 support year; and

3. A copy of this Order will be forwarded to the FCC with our letter certifying that the USF funds are being used according to the guidelines set forth by the FCC.

Dated at Augusta, Maine, this 22nd day of March, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.